

INITIAL STATEMENT OF REASONS

IMPLEMENTATION OF CITATION AND ADMINISTRATIVE FINE POWERS UNDER BUSINESS AND PROFESSIONS CODE SECTION 10080.9

These regulations address the Department of Real Estate's ("the Department") implementation of Section 10080.9 of the Business and Professions Code ("the Code"), which went into effect on January 1, 2012.

Prior to adoption of that statutory section, the Department was limited to four levels of disciplinary action. First, a violation that does not warrant formal discipline is subject to issuance of an informal *Corrective Action Letter*. Such a Corrective Action Letter is simply a warning from the Department that the respondent's action violates the Real Estate Law and Subdivided Lands Law (Division 4 of the Code, Sections 10000 et seq.). Where a violation is somewhat more serious, or involves actions that require a real estate license by an unlicensed person, the Department may issue an *Order to Desist and Refrain* (Section 10086 of the Code). Where the Department seeks to deny a license application or impose formal discipline on an existing licensee, the Department may file a formal complaint in the form of a *Statement of Issues* or an *Accusation* (Sections 10176 and 10177 of the Code). Such formal discipline may result in denial of a license application, revocation of an existing license, suspension, and restriction (including restriction placed on a newly issued license). Finally, where the Real Estate Commissioner ("the Commissioner") makes specified findings pursuant to the formal discipline actions above, the Department may issue an *Order of Debarment* (Section 10087 of the Code) to temporarily separate a particularly bad actor from the real estate market. All such formal discipline actions are subject to a due process hearing before the Office of Administrative Hearings, as well as appeal through Superior Court and the Court of Appeal.

The newly adopted Section 10080.9 of the Code empowers the Real Estate Commissioner to issue a citation and impose a fine for specified violations of the Real Estate Law and Subdivided Lands Law. Where licensees are found to have committed an act that violates these laws, yet which does not merit the higher disciplinary action of an Accusation, Section 10080.9 enables the Department to impose a tangible but lesser discipline. More importantly, Section 10080.9 enables the Department to issue a citation and impose a fine on an unlicensed person engaged in an activity for which a real estate license is required. This power is significantly more substantive than the existing Desist and Refrain Order.

In developing these regulations, Department staff reviewed the citation and fine processes of the Department of Corporations (“the DOC”) (Section 10080.9 of the Code was modeled from Section 12107 of the Finance Code, enforced by the Department of Corporations), the Contractors State Licensing Board (“the CSLB”), the Bureau of Automotive Repair (“the BAR”), and the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (“the BEARHFTI”). The Department’s review included consideration of the regulations used by those entities, and interviews with the personnel involved with enforcing citation and fine discipline.

The Department proposes adoption of four inter-related regulation sections:

1. Section 2907.1. Citation – Order of Correction and Assessment of Fine
2. Section 2907.2. Citation – Applicability of Citation and Amount of Administrative Fine
3. Section 2907.3. Appeal of Citation
4. Section 2907.4. Time for Payment of Administrative Fine for Citation

For clarity, this Initial Statement of Reasons addresses each of these sections separately with regard to the problem each is intended to solve, the purpose of the section, the necessity of the section, the alternatives considered, and the fiscal impact of the chosen alternative.

Section 2907.1: Pages 3 and 4 of this Initial Statement of Reasons

Section 2907.2: Pages 5, 6 and 7

Section 2907.3: Pages 8, 9, and 10

Section 2907.4: Page 11

Pages 12 and 13 address procedural requirements relating to the proposal as a whole.

Sec. 2907.1. Citation – Order of Correction and Assessment of Fine

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT SECTION 2907.1 IS INTENDED TO ADDRESS

This section addresses the need to implement and make specific the provisions of Section 10080.9 of the Code. In particular, that statutory section does not describe (1) details regarding citation processing from issuance through correction of the violation(s) and (2) the specific requirements imposed upon a person or entity cited that, if not met, may result in further disciplinary action.

PURPOSE, BENEFITS, AND GOALS OF SECTION 2907.1

This section is designed to describe, in chronological order, the basic process for issuance of a citation and correction of the violations described in a given citation. The regulation promotes fairness of process through provision of a “roadmap” to a licensee or non-licensee subject to a citation regarding the standard for the process and his/her/its responsibility to respond to a citation. The regulation also provides a standard for use by the Department and administrative law judges when gauging whether a respondent has responded adequately to issuance of a citation.

By subdivision, the section sets out:

- (a) The scope of discipline.
- (b) The range of entities that may be subject to such discipline.
- (c) The nature of a citation document itself and the information it must provide to the respondent.
- (d) The minimum standard for service of a citation.
- (e) The time allowed to comply with a citation’s order.
- (f) An allowance for extension of the time to comply for good cause.

NECESSITY OF SECTION 2907.1

This section offers the basic rules regarding citations that render any disciplinary matter enforceable – the “who, what, when, where, and how,” without which a person or entity subject to discipline may attempt to challenge the Department’s action as unfair or arbitrarily enforced.

SOURCE OF SECTION 2907.1

Some of the language of Section 2907.1 was adapted from Title 16, Sections 3394.40 et seq of the Regulations relating to appeals of citations issued by the Bureau of Automotive Repair.

ALTERNATIVES CONSIDERED WITHIN SECTION 2907.1 AND RATIONALES FOR THE OPTION SELECTED

- **Alternative: “Order of Abatement” in place of, or complementing, “Order of Correction”:** Other departments with citation and fine power use an “Order of Abatement” when dealing with non-licensed persons, essentially ordering a stop to non-licensed activity. *Reason for rejection:* The power granted through Section 10080.9 of the Code extends to discipline of both licensed and unlicensed activity, and the licensed activity violations may well require correction beyond simple cessation of the activity. Rather than have two separate types of order, Department staff considers “correction” to encompass both “abatement” (reduction or cessation of the risky or damaging activity) and active repair of harm done by a violator.
- **Alternative: Do not include subdivision (b), which specifies that violators may be partnerships, corporations or associations.** The language of Code Section 10080.9 refers to “person” and to “his or her” when referring to a person subject to a citation or fine. On its face, the language could be interpreted to mean that citation and fine discipline applies to natural persons only. However, the Real Estate Law (Code Section 10006) defines a “person” to include a corporation, company, and firm. In light of Section 10006, inclusion of subdivision (b) could be viewed as redundant. *Reason for rejection:* Where the regulation applies to unlicensed persons (who are far less likely than licensees to be familiar with the Real Estate Law), Department staff opted to include this brief restatement to avoid significant likelihood of misinterpretation by these affected persons.
- **Alternative: Adoption of a specific form for citations rather than the description appearing in subdivision (c).** The particulars that will appear on the standard citation document itself could be drafted and incorporated into this regulation. *Reason for rejection:* The description appearing in subdivision (c) allows for modification of non-critical information on the document without requiring an amendment of the regulation. The selected option coincides with the practices of DOC, CSLB, BAR, and BEARHFTI.
- **Alternative: Service of the citation via some process other than certified mail.** As with other disciplinary matters, a citation requires that the person subject to discipline receive service of notice of the action. The relevant sections of the Government Code, specifying standards for appropriate service, are cited. It is possible for service to be accomplished via personal service or registered mail. *Reason for rejection:* Other legally acceptable options carry additional costs (both personal service and registered mail are significantly more expensive than certified mail), without significant benefit in demonstration regarding completion of service. However, there may be exceptional instances where Department staff opt to employ a more rigorous alternative for service in order to ensure completion of service and strong evidence of such completion of service.

Sec. 2907.2. Citation – Applicability of Citation and Amount of Administrative Fine

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT SECTION 2907.2 IS INTENDED TO ADDRESS

This section addresses the need to implement and make specific the provisions of Section 10080.9 of the Code. In particular, that statutory section does not describe considerations involved in application of this level of discipline or setting the amount of an administrative fine for the violation(s) described in a citation. Although the statute describes a maximum amount to be assessed in a given fine, that language does not clearly address the possible compounding of fines. Department staff understand that such compounding was not the author's intent with regard to licensee discipline (as opposed to citations issued to unlicensed persons), and the proposed regulation addresses that issue.

PURPOSE, BENEFITS, AND GOALS OF SECTION 2907.2

Subdivision by subdivision, this section is designed to:

- (a) Set out the factors involved in gauging the seriousness of the licensee's violation or violations that may result in application of citation and the setting of a fine, dependent on the facts and circumstances of the violation.
- (b) Clarify that where there are multiple violations involved in the same Departmental investigation of a licensee, yet the totality of the offenses does not warrant more substantive disciplinary action (specifically, filing of an Accusation), only a single citation shall issue with a maximum of \$2,500 assessed.
- (c) Set out the additional factors involved when an unlicensed person or entity engages in activity requiring a license that may result in the increase of a fine above the minimum amount, depending on the facts and circumstances of the violation.

NECESSITY OF SECTION 2907.2

Functioning much like the "Criteria for Rehabilitation" that appear in Section 2911 and 2912 of the Regulations, this section offers guidance regarding those factors that will be considered when establishing the relative seriousness, and therefore cost to the violator, of the offenses subject to citation. Absent such a set of criteria, a person (or entity) subject to this level of discipline may attempt to challenge the Department's action as unfair or arbitrarily enforced. However, such criteria allow needed flexibility (within the very limited confines of a \$0 to \$2,500 penalty range) to deal with the wide variety of facts and circumstances that may occur in any particular violation.

SOURCE OF SECTION 2907.2

Some of the language of Section 2907.2 was sourced from Title 16, Section 884 et seq of the Regulations relating to citations issued by the Contractors State Licensing Board.

- **Alternative: Fixed schedule of fines for specific violations.** Among the chief models for this citation and fine program is the CSLB's citation and fine process. CSLB's regulation sets out a schedule of the possible violations and associated fine levels for each. *Reason for rejection:* The large number of ways in which one might violate the Real Estate Law and Subdivided Lands Law, and the associated Regulations, presented the initial concern regarding this option. Development of a schedule would involve considerable effort for little benefit, and add significant complexity to the proposed regulation as each violation is weighed (in the abstract only) against the others. Any additional statutory or regulatory requirement would necessitate amendment of the schedule via the regulatory process – a daunting prospect. When consulted on their choice, CSLB staff involved in setting that schedule expressed reservations about this option that match those of the Department's staff. They noted that the facts and circumstances regarding any specific violation may provide just cause to warrant raising or lowering the amount of a fine. Although they have not proposed an amendment of that regulation, they acknowledged that retention of greater flexibility would have been preferable. Ultimately, no matter what the underlying violation, what matters in establishing the proper level of penalty are the factors described in the regulation as proposed.
- **Alternative: Where a licensee commits multiple violations, issue multiple citations and compound the fines.** The plain language of the statute does not preclude the issuance of multiple citations to a single person, and the potential to compound fines against a licensee would have significant deterrent value. *Reason for rejection:* Through the Department's communications with the author or this statute, other legislators, and stakeholders involved with the legislative process, the evident intent of the statute was to insert a lower cost, fast, and efficient level of discipline above the "Corrective Action Letter" and below the "Accusation" within the Department's discipline spectrum. The Department makes this interpretation of the statute: This level of discipline was not meant to supplant the Accusation. This level of discipline is targeted at less serious violations by licensees that do not warrant the significant cost and time of an Accusation's formal license discipline process. Where the number of violations and the applicability of the factors listed in this proposed section result in a "Citation" penalty exceeding \$2,500, that case does warrant an Accusation rather than a Citation. The licensee should face the potential for license discipline that remains on his or her record – a more significant deterrent than a fine alone.
- **Alternative: Where an unlicensed person commits multiple unlicensed acts, issue a single citation to cover all acts (consistent with the treatment of licensees).** As noted immediately above, the Department's interpretation of the statute with regard to *licensees* combines all violations under a single citation, and thereby caps the total amount of the fine. Unlicensed persons, in contrast, are subject to the possibility of multiple citations issued simultaneously where there are multiple alleged violations. Unlicensed persons could be granted the same interpretation of the statute that is applied to licensed persons. *Reason for rejection:* There is a structural difference between the new level of discipline applicable to

licensees (intended to be low-level discipline, saving money for both the Department and the wayward licensee and not appearing on the licensee's disciplinary record) and that created for non-licensees (new Department power to impose penalty where there was none before, and not exempted from appearing as discipline). This distinction is highlighted in one aspect of the new statute's language. See 10080.9(a), and how it interacts with 10080.9(b). The last sentence of subdivision (a) reads: "A citation issued and a fine assessed pursuant to this section, while constituting discipline for a violation of the law, shall be in lieu of other administrative discipline by the commissioner for the offense or offenses cited, and the citation against and payment of any fine *by a licensee* shall not be reported as disciplinary action taken by the commissioner." [Emphasis added.] Subdivision (b) then goes on to state that issuance of a citation/fine does not prevent the commissioner from also issuing a desist and refrain order – the only other discipline a commissioner can do to an unlicensed entity. In short, the statute minimizes its impacts on licensees, but maximizes them with regard to unlicensed persons. The Department makes this interpretation: The statute is intended, where unlicensed persons are concerned, to establish a new highest level of discipline in order to create greater disincentives to violators. The Department's regulations maximize this new power with regard to unlicensed persons by publicly stating our intention to issue multiple citations (where multiple violations occur) and to compound the associated fines. This interpretation increases the disincentive to potential violators and thereby serves the public protection mission of the Department.

Sec. 2907.3. Appeal of Citation

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT SECTION 2907.3 IS INTENDED TO ADDRESS

This section addresses the need to implement and make specific the provisions of Section 10080.9 of the Code. In particular, that statutory section does not describe the appeal process that a person or entity may follow to challenge the issued citation or level of fine assessed. Although a hearing process under the Government Code is referenced by the statute and does function as the standard “due process” for challenges to Department actions, that process carries expenses to both the Department and respondent that are disproportionate to the level of discipline and fine amounts described in Section 10080.9 of the Code.

PURPOSE, BENEFITS, AND GOALS OF SECTION 2907.3

The section sets out the aspects of a citation that are subject to challenge via this process. This section also describes, in chronological order, the due process for appeal of a citation and/or fine. In doing so, the regulation provides two opportunities to challenge the discipline. The first is an informal conference with a person designated by the Commissioner for this role, designed to keep the appeal process for this low level of discipline economically efficient for both the respondent and the Department. The second is the formal hearing process applicable to all discipline matters.

NECESSITY OF SECTION 2907.3

Respondents must have a means to challenge governmental decisions, such as the issuance of a citation or imposition of a certain level of fine; this is basic, Constitutional “due process.” The formal hearing needed to resolve a disputed Accusation, however, is an expensive proposition. See the cost analysis describing the formal hearing process, provided with the Economic and Fiscal Impact Statement (“STD. 399”) relating to Section 2907.3, enclosed with this regulations package.

Up to 2012, the Department absorbed the cost of such disciplinary actions. With the adoption of Section 10106 of the Code, the Department now has the ability to request reimbursement from a respondent for some of the Department’s expenses in preparing for a hearing. Yet other Departmental costs, such as the expenses charged to the Department by the Office of Administrative Hearings, are not reimbursable. On the other side of the disciplinary dispute, even where such a reimbursement request is not made, the respondent licensee or unlicensed person faces costs in terms of preparation, legal representation, and lost work time when attending a formal hearing.

Where the dispute between the respondent and Department regards a fine of \$2,500 or less, such an expensive “due process” option should be a last resort, rather than a first resort, for the sake of both the respondent and the Department.

SOURCE OF SECTION 2907.3

Some of the language of Section 2907.3, particularly subdivisions (b) through (e) and the time frames within, were sourced from Health and Safety Code Section 44051 relating to appeals of automotive repair citations.

ALTERNATIVES CONSIDERED WITHIN SECTION 2907.3 AND RATIONALES FOR THE OPTION SELECTED

- **Alternative: No process except the possible formal hearing described in Section 10080.9.** The statute's subdivision (d) describes a hearing pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part I of Division 3 of Title 2 of the Government Code). Such an alternative would be possible without any supporting regulation. *Reason for rejection:* Formal hearings before an Administrative Law Judge of the Office of Administrative Hearings ("the OAH") can be expensive to conduct. Aside from the potentially recoverable costs of the Department's attorney's preparation for hearing, the unrecoverable costs charged by OAH to the Department are not insignificant. Merely for placing a hearing on calendar, OAH charges the Department in excess of \$80, and each action in the process may result in further costs to the Department. Respondent, too, faces costs in the form of business hours away from work, possible attorney costs, and imposition of cost recovery by the Department should the hearing result in a decision against respondent. The statute, however, was intended to keep these particular disciplinary actions at a low cost level to both the parties. Further, the Legislature and stakeholders describe a desire for quick resolution to citation cases, where the court calendars at OAH may result in months of delay before resolution. Finally, subdivision (c) of the statute describes the respondent's notification to the Department that "he or she *intends to request* a hearing" (emphasis added), indicating that some step prior to the *actual request* is anticipated despite not being described in the statute. The Department's chosen alternative provides such an informal review at significantly reduced cost and significantly faster resolution.
- **Alternative: Multiple levels of review prior to request for hearing.** The Department examined the option of compelling repeated opportunity at resolution prior to hearing, starting with a written challenge, and followed by informal conference. Resolution might be reached at either level, with resolution via a written challenge resulting in the lowest possible expense to both parties. Repetition might offer more opportunity to reach resolution before the significant expense and delay of formal hearing. *Reason for rejection:* The process itself could as easily add delay, and the draft regulations outlining the process were cumbersome. The Department's chosen alternative tracks more closely with the effective processes used by CSLB, BAR, and BEARHFTI. The expense and delay entailed by resort to formal hearing were also deemed sufficient to dissuade a respondent's frivolous resort to that extreme process.
- **Alternative: Different time periods than those selected.** Section 10080.9 specifies 30 days for a respondent to notify the Department of "intent to request a hearing," but other time periods are not specified. BEARHFTI's process specifies

only 15 days to request a citation review conference; CSLB specifies 15 days.

Reason for rejection: Department staff believe that 30 days allows ample time for a respondent to consider options before choosing whether or not to proceed to the next step in the appeal process, without building unneeded delay into the timeline. A shorter time period for the formal hearing request following the informal conference would add needless complication to the timeline for little gain in accelerated process. Finally, consistent use of the 30 day period for respondent's deadlines throughout the regulation (following the lead of the statute) allows for easier comprehension and recollection of the regulation's requirements by all stakeholders.

- ***Alternative: Do not offer, or impose a specified time limit on, discretionary extensions of the time to file a notice of intent to request hearing or a request for hearing.*** The statute specifies the time period for filing a notice of intent to request hearing, and is silent with regard to a limit on submission of the actual request for hearing. The Department need not offer extension of the 30 day periods described in the regulation, or may specify a limit on such extensions within the regulation. *Reason for rejection:* The Department's 95 years of licensing experience have amply demonstrated that the facts and circumstances of a specific person's situation may well offer grounds for humanitarian and other delays in process without unduly placing the public at risk. The Department's announcement, via proposal and adoption of these regulations, of its authority to grant such extension given sound reasons allows both respondents and the public to seek and respond to such extensions without surprise.
- ***Alternative: Do not include language noting the applicability of cost recovery under Section 10106 of the Code.*** The Department's authority to request recovery of costs for investigation and enforcement of disciplinary matters against licensees is statutory. That power need not be restated in the regulation. *Reason for rejection:* The cost recovery power is newly granted, embodied in Section 10106 of the Business and Professions Code and effective on January 1, 2012. This section was adopted via a different legislative bill than was Section 10080.9, the citation and fine power addressed in this proposal. Discussions with stakeholders during development of these regulations and even within the Department demonstrated that the applicability of cost recovery to citation and fine matters was not well understood. Further, cost recovery functions as a significant factor in motivating respondents to resolve a citation without resorting to the expense and delay of a formal hearing. To ensure that this motivating factor is not disregarded by cited licensees, subdivision (f) was added to the text.

Sec. 2907.4. Time for Payment of Administrative Fine for Citation

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT SECTION 2907.4 IS INTENDED TO ADDRESS

This section addresses the need to implement and make specific the provisions of Section 10080.9 of the Code. In particular, that statutory section does not describe the time frame for completion of payment for an assessed fine.

PURPOSE, BENEFITS, AND GOALS OF SECTION 2907.4

This section sets out the time frame for payment of an administrative fine, depending (as appropriate) upon whether a citation and/or fine is subject to appeal and the length of the appeal process. This section also reinforces the statute's requirement regarding a person (or corporate entity) who fails to pay an assessed fine or otherwise fails to comply with the terms of a citation.

NECESSITY OF SECTION 2907.4

Section 10080.9 of the Code is silent regarding standards for timing of compliance with the penalties assessed via citation. This section sets out a reasonable, justifiable, and enforceable standard for compliance regarding payment of fines.

- ***Alternative: Different time periods:*** The Department could specify a time period shorter than 30 days after final resolution of the citation, or longer than 30 days.
Reason for rejection: The minimum fine amount was set at a level so as to hold some significance to the respondent, but Department staff recognize that such an unexpected expense may present payment issues. Rather than set a shorter time period, 30 days allows for a minimum of budgetary adaptation by a respondent on a tight budget. Rather than set a longer time period, Department staff believe timely compliance will reinforce the corrective nature of the citation and fine. Finally, consistent use of the 30 day period for respondent's deadlines throughout the regulation (following the lead of the statute) allows for easier comprehension and recollection of the regulation's requirements by all stakeholders.

ALL PROPOSED SECTIONS: RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT (Pursuant to Government Code Section 11346.3(b))

The Department has conducted an Economic Impact Assessment, and that document is relied upon in reaching these results:

- The proposal does not significantly affect the creation or elimination of jobs within the State of California.
- The proposal does not significantly affect the creation of new businesses or the elimination of existing businesses within the State of California.
- The proposal does not significantly affect the expansion of businesses currently doing business within the State of California.
- The proposal will not adversely affect the health and welfare of California residents, worker safety, or the State's environment. By implementing, interpreting, and clarifying this new level of discipline within the spectrum of disciplinary actions available to the Department, the proposal will benefit the general welfare of California residents by ensuring that licensees and unlicensed persons abide by the Real Estate Law and the protections that law affords the public.

Although the establishment of a citation and fine disciplinary level may have a variety of economic impacts on stakeholders, most of these impacts are the result of the statutory adoption of Section 10080.9 of the Code. The Department's proposal serves to clarify, interpret, and make enforceable the statutory section, and does not in itself carry any significant fiscal impacts.

Unlike the other regulatory sections proposed with this package, Section 2907.3 of the Department's proposal presents an economic impact on both the Department itself and each potential respondent. With Section 2907.3, the Department creates a level of "due process" that avoids expense to both parties as an initial step toward resolving disputes over issuance of a citation or the amount of a fine. The Department, however, faces additional cost in conducting this step, and believes that the Department's savings and cost as a result of the proposal will balance.

ALL PROPOSED SECTIONS: TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Commissioner did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of these regulation sections. As noted above, however, Department staff reached out to the staff of DOC, CSLB, BAR, and BEARHTFI to examine the positive and negative experiences of those entities and their stakeholder groups with their citation and fine power and associated regulations.

The Commissioner and Department staff wish to extend thanks to the following public servants:

- Al Weingard and Warren Adams of the Department of Corporations

- David Fogt, Dennis Leavitt, Peter Sugar, Jessie Flores, Jay Zaveri, Michael McCreary, and Raul Oseguera of the Contractors State Licensing Board
- Tim Corcoran, Greg, Kristin, and Mark Kyotani of the Bureau of Automotive Repair
- Theresa Siepert and Rick Diamond of the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation
- Alicia Boomer of the Office of Administrative Hearings

Further, the Department reviewed the legislative history relating to the passage of SB 53 (2011), the legislative measure that includes adoption of the Citation and Fine power.

AS TO THE PROPOSED REGULATIONS AS A WHOLE:

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO PRIVATE PERSONS

The alternatives relating to each of the specific choices within this regulation package are described in the materials above, along with the reasons why the selected option was preferred. The Commissioner finds that no alternatives he has considered would be more effective in carrying out the purpose of the proposed regulation change or would be as effective and less burdensome to affected private persons than the proposed regulation change.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON BUSINESSES

It is important to note, first, that the statutory scheme establishes this citation and fine system and its financial impacts in order to meet the public protection purpose of the Department. Those businesses subject to an adverse economic impact will be those who are acknowledging, or subject to proof of, violation of the Real Estate Law and Subdivided Lands Law. The imposition of an adverse impact is intended by the statute, specifically to enhance the disciplinary effect of the Department on the public's behalf.

However, those adverse impacts are not specifically impacts of the regulatory proposal. The Department staff's choices within these proposed sections, and the alternatives Department staff identified and discarded, are discussed within the text relating to each individual section, above.